

The Commonwealth of Massachusetts State Ethics Commission

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COMMISSION FACT SHEET

Town & City Clerks - Justices of the Peace

The conflict of interest law states that a municipal employee may not "use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals..." G.L. c. 268A, §23(b)(2). The Commission has ruled that this section prohibits a municipal employee from using municipal facilities or resources to obtain personal financial gain.

A great many city and town clerks are appointed Justices of Peace (JPs) in order to facilitate marriage ceremonies at municipal offices. Therefore, questions have arisen as to whether those municipal officials may receive a personal gain through use of municipal facilities while being paid municipal salaries. This fact sheet provides G.L. c. 268A guidelines for those Justices of the Peace/Clerks (JP/Clerks).

Appointment

JPs are appointed by the governor for seven year renewable terms. Appointments are limited to no more than one JP for every 5,000 people, with the exception of city and town clerks and their assistants, who receive the appointments by virtue of their offices. Separate JP application forms exist for clerks. Statutory distinctions between JPs and JP/Clerks can be found in several provisions of the General Laws. See, e.g., G.L. c. 207, §38 (solemnization of marriages); G.L. c. 218, §5 (receipt of complaints and issuance of warrants, summonses). Thus, the Legislature anticipates that city and town clerks and their assistants will seek JP appointments.

The Secretary of State's JP guidelines state that the primary function of the JP is to solemnize civil marriage ceremonies. The solemnization of marriage statute enumerates the types of individuals authorized to perform marriages and distinguishes between the two types of JPs. G.L. c. 207, §38. Generally, JPs must receive the designation of the governor to perform marriages. However, JP/Clerks need no such special designation before they may solemnize marriages, evidencing an expectation on the part of the legislature that clerks should be empowered to perform this function.

Advertisement

JP/Clerks may advertise, using their town offices and telephone numbers. Any person authorized to perform marriages may advertise his name or any trade name, business address, telephone number, rate of compensation as provided by law, regular hours of availability, and second language availability in any newspaper, magazine,

telephone directory, or publication of general circulation. G.L. c. 207, §58. Therefore, a JP/Clerk's use of his business address and telephone number is not an unwarranted privilege of substantial value "not properly available to similarly situated individuals." Thus, this practice does not violate §23(b)(2).

We note, however, that Clerks enjoy an advantage not available to other JPs in that they also issue marriage licenses. Therefore, any attempt to capitalize on that fact, such as the disbursement of business cards when couples receive their marriage licenses, will constitute a violation of §23(b)(2), as it is an "unwarranted privilege" not available to "similarly situated individuals." See, **In the Matter of Manuel F. Spencer**, 1985 SEC 214 (disbursement of immediate family member's business card in the course of official duty violates §23(b)(2)). We therefore recommend that Clerks make available a listing of local JPs at the time of the issuance of a marriage license.

Municipal Facilities

JP/Clerks may use municipal facilities to solemnize marriages. As stated, the legislature anticipates, and, indeed, the public expects, that city and town clerks and their assistants be empowered to solemnize marriages. An employee's legislatively authorized use of municipal facilities can be distinguished from the unauthorized use more typically found to violate §23(b)(2). See, e.g., **In the Matter of Dennis Flynn**, 1985 SEC 245 (personal use of fire department vehicles violates §23(b)(2)). Thus, performance of a marriage ceremony at municipal facilities provides neither the JP/Clerk nor the marriage partners with an "unwarranted privilege."

Fees

JP/Clerks may personally accept marriage solemnization fees for ceremonies performed at municipal facilities during normal working hours.¹ State law provides that the fee for solemnization of a marriage is thirty-five dollars if performed in the JP's home community or fifty dollars if performed in any municipality in the Commonwealth. Thus, a JP/Clerk who performs a marriage at city or town hall is entitled to a maximum fee of thirty-five dollars.

Section 23(b)(2) will be violated by receipt of outside compensation of substantial value for performance of non-municipal duties while simultaneously receiving municipal compensation. The situation at hand is most closely analogous to that of a state employee who wishes to receive an honorarium for a speaking engagement while at the same time being paid by the Commonwealth. Receipt of outside compensation of substantial value under these circumstances violates §23(b)(2) as it is use of official position to secure an unwarranted privilege not available to similarly situated individuals. **EC-COI-86-11; 81-95.**

¹We note that individual cities and towns may adopt stricter policies for JP/Clerks, to which the Commission will defer. G.L. c. 268A, §23(e). Therefore, we advise checking with the city solicitor or town counsel to ascertain whether stricter policies have been adopted.

The Commission has consistently found that "substantial value" shall mean items of a value of fifty dollars or more. See, **EC-COI-86-11** (receipt of an honoraria of less than fifty dollars while simultaneously being paid by the Commonwealth does not violate §23(b)(2); **Commission Advisory No. 8 Free Passes** (substantial value determined to be items valued at fifty dollars or more).

As the maximum fee available to JP/Clerks is thirty-five dollars, their simultaneous receipt of a municipal salary and a solemnization fee does not violate §23(b)(2), as the thirty-five dollar fee is not "of substantial value."²

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²We add that JP/Clerks who perform marriages during times in which they do not earn a municipal salary (e.g., weekends, vacations) receive no privilege not available to other JP's, that is, the ability to earn fees for marriages performed on private time. Thus, they do not violate §23(b)(2). Cf. **Quinn, supra** at 213 n.6 (1987) (court clerks acting on bail applications outside normal working hours entitled to fees).

